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The State of New Hampshire



Attorney General

Concord

August 28, 1975

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Colin A. Norberg, Esquire
City Solicitor
City Hall
Laconia, New Hampshire 03246

Dear Colin:

Your letter dated August 21, 1975 raises the following question: Is the City of Laconia required to register to vote in the coming election persons of eighteen years or older who are committed to the care of the Laconia State School and Training Center.

The answer to this question can be found in RSA 135-B:42 (Supp - 1973) which states that "[n]o person who is receiving treatment for mental illness shall be deprived of any legal rights; provided, however, that if such a person has been adjudicated as incompetent, his rights may be limited to the same extent as the rights of any incompetent person are limited at general law." Under RSA 464 (Supp - 1973) and New Hampshire case law, a person is mentally incompetent if he is incapable of exercising rational judgment in the management of his own affairs. See also Annot. 9 A.L.R. 3d 774 (1966). Inasmuch as a person is eligible for admission to the Laconia State School only if he has been determined to be "mentally deficient" through either a judicial or administrative process pursuant to RSA Ch. 171 (Supp - 1973), such a person has been adjudicated as the equivalent of incompetent and is not fully entitled to exercise his legal rights.

At general law a mentally incompetent person is not permitted to enter into any contractual relationship with respect to the management of his affairs without the approval of his guardian, and it is reasonable to conclude that if he is incapable of exercising rational judgment in his own affairs, he would likewise be unable to so act in public affairs. The electoral

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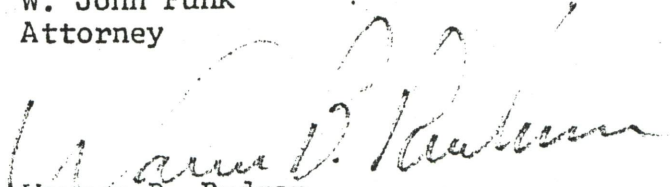
process presumes that the voters engage in a rational deliberation in their choice of candidates, and the registration of mental incompetents would do injustice to this belief.

Accordingly, a city is not required to register any person committed to the care of the Laconia State School unless the Director of the Division of Mental Health certifies that such person possesses the mental capacity to understand the nature of public elections and exercise his vote in a reasonably intelligent fashion. A person desiring to vote should make an application to the Director, who should act in a timely fashion to determine whether or not such person is qualified to vote.

Sincerely,



W. John Funk
Attorney


Warren B. Rudman
Attorney General